IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 1703 OF 2007

Mr. Sunil Gupta .... Applicant.

V/s

State of Maharashtra
and anr. .... Respondents.

Mr. J.P. Shah for the applicant.

Mr. Nikhil Mehta with Mr. Rahul Mehta i/b M/s. KMC Legal Venture for Respondent No.2.

Mr. Y.M. Nakhawa, APP for the State.

CORAM: V.M. KANADE, J.
DATE : 30th October, 2007

P.C.:

1. Heard the learned Counsel appearing on behalf of the applicant and the learned Counsel appearing on behalf of respondent No.2.

2. Applicant has filed this application, challenging the order of Trial Court issuing process in a complaint filed by Respondent No.2 under section 138 of the Negotiable Instruments Act. Applicant is the original accused in complaint filed by Respondent No.2 under section 138 of the Negotiable Instruments Act. Respondent No.2, in his complaint, alleged that the cheque which was given by the applicant was dishonoured when it was presented in his bank. It is further alleged that a statutory notice was issued

and upon failure of the applicant to comply with the allege notice, a criminal complaint was filed. The learned Magistrate was pleased to issue process by his order dated 10/7/2006. Against this order, applicant preferred a revision application. This revision application was dismissed by the Sessions Court.

3. It is submitted by the learned Counsel appearing on behalf of the applicant that Respondent No.2 had suppressed material facts in his complaint. He submitted that the complainant was not the payee of the subject cheque and hence no cognizance could have been taken of the complaint filed by the complainant. He submitted that under the provisions of section 142 read with section 138, cognizance of the offence under section 138 could be taken only upon a complaint made by the payee or holder in due course. He submitted that, in the present case, complainant was not the payee. He submitted that the complaint was filed by M/s. Osram India Private Ltd. It was not the payee of the said cheque. He submitted that the cheque was issued by M/s. Osram India Ltd. and, as such, the complainant had no right to file a complaint.

4. The submissions made by the learned Counsel for the applicant cannot be accepted. I have perused the cheque which has been issued by M/s Osram India Ltd. In the complaint there are sufficient averments to the effect that the complainant had issued the cheuqe. Therefore, at this

stage, it will not be possible to come to the conclusion that the complainant is not the payee of the cheque. No case is made out for interference with the order of issuing process. Application is accordingly dismissed.

(V.M. KANADE, J.)